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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,203	07/08/2003	Stephen H. Zalewski	12745/4	3059
7590	04/08/2005		EXAMINER	
KENYON & KENYON Suite 600 333 W. San Carlos Street San Jose, CA 95110-2711			IQBAL, NADEEM	
			ART UNIT	PAPER NUMBER
			2114	

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,203	ZALEWSKI ET AL.	
	Examiner Nadeem Iqbal	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon et al., (U.S. Patent number 5673382) in view of Hsiao et al., (U.S. Patent number 6266784).

As per claims 1 & 17, Cannon et al., (Cannon) teaches (col. 5, lines 23-25) a method within a data processing system providing disaster recovery for reclaiming an off-site storage volume without mounting the volume at a primary storage site. He thus teaches limitations pertain to a method creating a dynamic storage pool for data recovery. He also teaches (col. 5, lines 26-28) that the method first determines which off-site storage volumes are eligible for reclamation, and also teaches that for each eligible off-site volume, the method locates, within the primary storage site, a copy of the files remaining on the off-site volume. He thus teaches limitations

pertain to determining an amount of an available storage area and identifying storage capabilities of the available storage area. He also teaches (col. 5, lines 30-32) to copy the primary copies so a copy storage volume at the primary storage site. He thus teaches limitations pertain to replicating the application server data based on the selected protection policy scheme. He does not explicitly disclose selecting a protection policy scheme for replication of an application server data based on the identified storage capabilities. Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the recovery plan file of Hsiao into the invention of Cannon to provide the invention of Cannon a protection policy scheme as claimed. This is because, both inventions are in the same environment of storage system recovery and Cannon further teaches a method that determines which off-site storage volume are eligible for reclamation and thus provides motivation for the stated inclusion.

As per claims 2 & 18, Cannon also teaches (col. 5, lines 26-28) that the method first determines which off-site storage volumes are eligible for reclamation, and also teaches that for each eligible off-site volume, the method locates, within the primary storage site, a copy of the files remaining on the off-site volume. He thus identifies storage capacity, and storage performance.

As per claims 3 & 19, Cannon teaches (col. 5, lines 40-42) the invention includes a server that includes a database, and a plurality of storage pools, a primary storage volume for storing a primary copy of client files. He thus provides storage volumes.

As per claims 4, 5, 20 & 21, Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. He thus provides the protection policy scheme.

As per claims 6, 7, 22 & 23, Cannon teaches (col. 5, lines 24-26) the method provides disaster recovery for reclaiming an off-site storage volume without mounting the volume at a primary storage site, the method also first determines which off-site storage columns are eligible for reclamation.

As per claims 8 & 24, Cannon teaches (col. 5, lines 55-57) that the storage manager also performs an incremental back-up operation by copying the newly created, or newly updated, client files in the primary storage pool to the copy storage pool.

As per claim 9, Cannon substantially teaches the claimed invention as disclosed related to claim 1 above. He also teaches (col. 5, lines 47-49) a second storage pool, a copy storage pool, contains a set of copy storage volumes for storing a back-up copy of client files. He thus teaches limitations pertain to at least one application server and an available storage area to back-up the data generated by the at least one server. He also (col. 5, lines 26-28) that the method first determines which off-site storage volumes are eligible for reclamation, and also teaches that for each eligible off-site volume, the method locates, within the primary storage site, a copy of the files remaining on the off-site volume. He thus teaches limitations pertain to determining an amount of an available storage area and identifying storage capabilities of the available storage area. He also teaches (col. 5, lines 30-32) to copy the primary copies so a copy storage volume at the primary storage site. He thus teaches limitations pertain to

replicating the application server data based on the selected protection policy scheme. He does not explicitly disclose selecting a protection policy scheme for replication of an application server data based on the identified storage capabilities. Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. It would have been obvious to a person of ordinary skill in the art to include the recovery plan file of Hsiao into the invention of Cannon to provide the invention of Cannon a protection policy scheme as claimed. This is because, both inventions are in the same environment of storage system recovery and Cannon further teaches a method that determines which off-site storage volume are eligible for reclamation and thus provides motivation for the stated inclusion.

As per claim 10, Cannon also teaches (col. 5, lines 26-28) that the method first determines which off-site storage volumes are eligible for reclamation, and also teaches that for each eligible off-site volume, the method locates, within the primary storage site, a copy of the files remaining on the off-site volume. He thus identifies storage capacity, and storage performance.

As per claim 11, Cannon teaches (col. 5, lines 40-42) the invention includes a server that includes a database, and a plurality of storage pools, a primary storage volume for storing a primary copy of client files. He thus provides storage volumes.

As per claims 12 & 13, Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. He thus provides the protection policy scheme.

As per claims 14 & 15, Cannon teaches (col. 5, lines 24-26) the method provides disaster

recovery for reclaiming an off-site storage volume without mounting the volume at a primary storage site, the method also first determines which off-site storage volumes are eligible for reclamation.

As per claim 16, Cannon teaches (col. 5, lines 55-57) that the storage manager also performs an incremental back-up operation by copying the newly created, or newly updated, client files in the primary storage pool to the copy storage pool.

As per claim 25, Cannon substantially teaches the claimed invention as disclosed related to claim 1 above. He also teaches (col. 5, lines 47-49) a second storage pool, a copy storage pool, contains a set of copy storage volumes for storing a back-up copy of client files. He thus teaches limitations pertain to at least one application server and an available storage area to back-up the data generated by the at least one server. He also (col. 5, lines 26-28) that the method first determines which off-site storage volumes are eligible for reclamation, and also teaches that for each eligible off-site volume, the method locates, within the primary storage site, a copy of the files remaining on the off-site volume. He thus teaches limitations pertain to determining a storage volume from the available storage area and identifying storage capabilities of the available storage area. He also teaches (col. 5, lines 30-32) to copy the primary copies so a copy storage volume at the primary storage site. He thus teaches limitations pertain to replicating the application server data based on the selected protection policy scheme. He does not explicitly disclose selecting a protection policy scheme for replication of the generated data. Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. It would have been obvious to a person of

ordinary skill in the art to include the recovery plan file of Hsiao into the invention of Cannon to provide the invention of Cannon a protection policy scheme as claimed. This is because, both inventions are in the same environment of storage system recovery and Cannon further teaches a method that determines which off-site storage volume are eligible for reclamation and thus provides motivation for the stated inclusion.

As per claims 26 & 28, Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. He thus provides the protection policy scheme.

As per claim 27, Cannon also teaches (col. 5, lines 26-28) that the method first determines which off-site storage volumes are eligible for reclamation, and also teaches that for each eligible off-site volume, the method locates, within the primary storage site, a copy of the files remaining on the off-site volume. He thus identifies storage capacity, and storage performance.

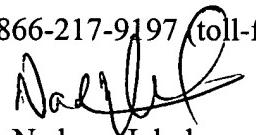
As per claims 29, Cannon does not explicitly disclose selecting a protection policy scheme for replication of the generated data. Hsiao teaches (col. 2, lines 30-32) a recovery plan file for the source server managed at the target server according to defined criteria under the control of the source server under specified rules for backup. It would have been obvious to a person of ordinary skill in the art to include the recovery plan file of Hsiao into the invention of Cannon to provide the invention of Cannon a protection policy scheme as claimed. This is because, both inventions are in the same environment of storage system recovery and Cannon further teaches a method that determines which off-site storage volume are eligible for reclamation and thus provides motivation for the stated inclusion.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadeem Iqbal whose telephone number is (571)-272-3659. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W Beausoliel can be reached on (571)-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nadeem Iqbal
Primary Examiner
Art Unit 2114

NI